IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2399 OF 2004

ALONG WITH

CRIMINAL WRIT PETITION NO.2400 OF 2004

ALONG WITH

CRIMINAL WRIT PETITION NO.2401 OF 2004

Ashok Jayantilal Khandwala ...Petitioner

Versus

State of Maharashtra & Anr. etc.etc. ...Respondents

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Mr.S.N.Kantawala i/b Kantawala & Co.
for Petitioner in all matters.
Mr.D.R.More, A.P.P. for Respondent No.1 in all matters.
Mr.A.H.H.Ponda for Respondent No.2 in all matters.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 17, 2004.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.More, A.P.P. waives notice for Respondent No.1 in all the matters. Mr.Ponda waives notice for Respondent No.2 in all the matters.

3. As short question is involved, Petitions are taken up for final disposal forthwith, by consent.

4. The Respondent No.2 has initiated criminal action against the Petitioner, who is named as accused No.4 in original Misc. Case No.802/M/02, now renumbered as 1722/S/02 pending before the Metropolitan Magistrate, 33rd Court at Ballard Pier, Mumbai for offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1966. The Petitioner has been named on the assertion that he is a partner. No other allegation has been made in the complaint insofar as Petitioner is concerned. There is no assertion that the Petitioner is responsible for the day-to-day affairs of the partnership firm or

in-charge of the affairs thereof at the relevant time. Even on reading the complaint as a whole, no such allegation can be discerned. Mr.Ponda for Respondent No.2 fairly accepts this position. If it is so, the criminal action against the Petitioner, who has been named as accused No.4 cannot proceed in law. Accordingly, the Petitions ought to succeed. However, Mr.Ponda placing reliance on the decision of the Apex Court reported in **AIR 1983 SC 67 in the case of Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & Ors.** contends that during the course of trial, if sufficient material comes on record, so as to indicate the complicity of the present Petitioner, the remedy of proceeding against the Petitioner be left open. This submission is founded on the observations made in Paragraph 19 of the above said case. That being the legal position, the Court trying the case in respect of the other accused will be bound to consider the said aspect at the appropriate stage, as and when occasion arises.

5. Accordingly, the proceedings pending before the lower Court against the present

Petitioner is quashed. However, trial in respect of the other accused to proceed in accordance with law. The Petitions succeeds on the above terms.

A.M.KHANWILKAR, J.